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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 07 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The AAO notes that U.S. Citizenship and Immigration Services (USCIS) has mistakenly assigned two different alien numbers (A-numbers) to the petitioner. The record of proceeding for the present matter is in file [redacted], but USCIS records show another file with the A-number [redacted]

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition on her own behalf, the petitioner was a postdoctoral fellow at the [redacted]. The petitioner stated that she intended to work in a postdoctoral fellowship at the [redacted] or p[o]ssibly [redacted] USCIS records indicate that the petitioner began working at [redacted] in late 2010. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and several supporting exhibits, many of them duplicating earlier submissions.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. (Her professional status derives from her scientific research work, rather than her earlier qualifications as a nurse.) The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding

an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on November 27, 2009. Counsel stated:

> [The petitioner] is one of the few research scientists and practitioners of nursing who have received extensive training in genetics and neuroscience. Due to her extensive scientific training and her background as a nurse and then a nursing instructor, she conducts her research at the highest and most effective level. . . .
>
> Her pioneering research combining nursing, genetics, and neuroscience contributes directly to our country's health care in terms of saving life, reducing suffering, and improving recovery by developing and optimizing medical care methods and treatments to patients in variety degree [*sic*] of traumatic brain injury or cerebral ischemia.

Counsel described the petitioner's academic background, employment history, publication record and other information in detail. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the evidentiary weight lies with the first-hand documentary evidence in the record, rather than with counsel's interpretation of that evidence.

The petitioner submitted the manuscript of a book chapter that she co-wrote, not yet published as of the filing date, and indicated that a publisher, [redacted] had offered to publish the petitioner's doctoral dissertation. The record contains no indication that [redacted] peer-reviewed the dissertation, or has any standards that a manuscript must meet to be suitable for publication. Instead, materials from the publisher indicate that the company is willing to "publish all scientific work," distributed on a "print-to-order" basis by which the publisher does not print a work until the placement of an order. Leaving aside that [redacted] had not yet published the petitioner's work as of the petition's filing date, the petitioner did not establish the extent to which such publication would effectively disseminate her work.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). As of the filing date, the petitioner claimed one published article, a 2002 piece entitled '[redacted]" in [redacted] The article's title and the forum in which it appeared seem to indicate that the article focuses on the practice of nursing rather than on medical research.

A second article, '[redacted]," more clearly reflects medical research, but the petitioner did not show that this article had seen print before the filing date. The petitioner's exhibit list described the article as "in press" at the time of filing. Therefore, all of the petitioner's medical

research disseminated before the filing date was in the form of conference presentations from 2006 onward.

The initial submission showed that the petitioner's research work had produced results for publication and presentation, but the petitioner's work product itself is not evidence of its own significance or impact within the petitioner's field. The petitioner did not submit objective, independent evidence (such as evidence of independent citation) to establish the extent of the influence of her research.

Six letters accompanied the initial submission, mostly from individuals who had worked with the petitioner at UP. [redacted] and its [redacted], stated:

> [The petitioner] was awarded the [redacted] for her abstract that was presented at the annual conference [of the [redacted]. This award is given to only one individual per year that fits the criteria of a young investigator. This is a highly competitive award and exemplifies the recognition of [the petitioner's] accomplishments.

Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), evidence of organizational recognition for achievements or contributions is part, but not all, of a successful claim of exceptional ability. Exceptional ability, in turn, is not sufficient to qualify for the waiver of the job offer requirement typically applying to aliens of exceptional ability. Therefore, evidence that the petitioner has received an award of this kind is generally not strong evidence that the petitioner qualifies for a benefit that is not automatically available to aliens of exceptional ability. USCIS considers each petition on a case-by-case basis, and a particularly significant award might show that the recipient's work was especially significant within the field, but the burden is on the petitioner to establish the significance of the award. It is not self-evident that an award with a potential recipient pool limited to the attendees at a single professional conference (let alone the youngest and/or least experienced such attendees) would meet this threshold.

[redacted] offered similar comments along the same vein as above, stating that the petitioner's conference presentations "exemplif[y] [the petitioner's] productivity," and that the petitioner's ability to secure research funding "most exemplifies [the petitioner's] accomplishments." The record contains no objective evidence to show that the petitioner's number of conference presentations or the specifics of her funding set her apart from other qualified researchers in the field.

[redacted] stated:

> [The petitioner] has two manuscripts in development or submitted for publication and one of these manuscripts reports the results of her research related to neuroglobin gene polymorphisms and outcomes attained after severe traumatic brain injury. This paper will be the <u>first</u> to report on this gene within the context of human brain injury,

> providing evidence of [the petitioner's] unique position among Nurse Scientists in particular and International Scientists in general. . . .
>
> [The petitioner] has carved a unique research niche in that she investigates genetic variation in candidate genes with respect to outcomes after neurological insult, particularly her focus on neuroglobin, which has not been investigated extensively in humans. . . . I believe that her continued involvement in this line of investigation will result in a better understanding of the role of neuroglobin following neurological insult, potentially resulting in improved outcomes for individuals suffering from these injuries.

(Emphasis in original.) The petitioner's choice of research subject addresses the "intrinsic merit" prong of the national interest test, but she cannot inherently qualify for a waiver simply because she chose that subject. The assertion that the petitioner "will be the first to report" a particular finding would be remarkable only if it were customary for most presentations and articles to repeat findings that are already known and disseminated. The originality of a work of research appears to be not a mark of distinction, so much as a basic requirement for passing routine peer review.

[redacted], stated:

> [The petitioner] worked in my laboratory as a doctoral student between [redacted] and [redacted] During this time I served as a committee member on [the petitioner's] dissertation committee and I collaborated with [her] major advisor to aid in the development of her thesis research. . . . Her training in nursing outcomes research coupled with biomarker analysis, gives her a unique skill set within her chosen field.
>
> . . . Her work to determine the relationship between genes that regulate [neuroglobin] and clinical outcomes is unique because it blends specific skills with medical and nursing research.

Like [redacted] asserted that the petitioner's production of research work for publication and presentation, combined with her receipt of "a [redacted] at the [redacted]," illustrate the petitioner's standing in her field.

[redacted], stated:

> [The petitioner] conducted the first study of neuroglobin (a potential neuroprotective agent) in patients with a traumatic brain injury and discovered relationships between genetic markers of neuroglobin and functional outcomes. These findings are groundbreaking and have the potential to make a tremendous impact on her field.

Several [redacted] faculty members share this perspective on the potential impact of the petitioner's work, but the record does not show what impact this work has had on the efforts of researchers at other institutions. [redacted] also stated:

> I understand the USCIS wants to know why a national interest waiver is sought for [the petitioner] rather than going the route of labor certification. The reason is that the ability to make significant advances in research is directly dependent on the skill, insight, and genius of the researchers. Labor certification makes no distinction or allowances between a minimally qualified U.S. worker, and a person that possesses the "right stuff" for success in the work in question. By her accomplishments on the project described, [the petitioner] has proven that she has extraordinary abilities, well beyond that of the vast majority of our professional members. Acknowledgment of this ability and allowing it to thrive in the United States is definitely in the area of national interest. In my research, there is no substitute for ingenuity and the "right stuff," and those qualities will not be selected for by labor certification. Since there is a critical shortage of nursing faculty, particularly those who hold her qualifications, it is in the national interest of health care research in the United States and in nursing education in the United States to grant her an immigrant visa.

With respect to the assertion that the labor certification process does not account for "the ability to make significant advances in research," Congress established no blanket waiver for scientific researchers, and USCIS has no authority to create one. Congress did, in fact, create other immigrant classifications for the most distinguished researchers, with no labor certification requirement, at section 203(b)(1)(A) and 203(b)(1)(B) of the Act. The former classification encompasses aliens of extraordinary ability in the sciences, while the latter accommodates outstanding professors and researchers, and requires an offer of employment but not a labor certification.

The assertion that "there is a critical shortage of nursing faculty," if true, would tend to indicate that the petitioner could obtain a labor certification. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221.

[redacted] who is now a [redacted] for the [redacted] stated:

> As a co-mentor for [the petitioner], I worked closely with her in the research project regarding cerebral ischemia. Her cutting-edge idea is that neuroglobin is up-regulated when central neuron system undergoes a hypoxia e.g. ischemic stroke and traumatic brain injury. . . . She and I established an animal cerebral ischemic model, and investigated the changes after a short time of ischemia in rats. . . . Recently, she . . . successfully figured out the relationship between the changes of neuroglobin and disability outcomes following traumatic brain injury (TBI) in patients. . . . [S]he has

demonstrated her breakthrough scientific insights, independent performances, and undeniable contributions.

[redacted] Pennsylvania, "met [the petitioner] in an academic conference three years ago in the [redacted] I was very impressed by her strengths and eagerness in pursuing technology innovation, especially in the area of clinic research." [redacted] credited the petitioner with "major achievements in dealing with the complex and changing ethical issues concerning the rights of patients to receive a better quality of care in a critical hospitalization situation," and stated that she "has developed more effective ways to diagnose, treat, and prevent illness." [redacted] a chemical manufacturer and "expert in water soluble polymer technology," did not establish his credentials in nursing or medical research that would permit him to render an expert opinion regarding the petitioner's work.

The only witness not to claim involvement with the petitioner's work in Pittsburgh is [redacted], Taiwan. [redacted] did not specify how he knows of the petitioner or her work, but [redacted] letter contains biographical details that [redacted] would not have found in the petitioner's published and presented work. (The record indicates that the petitioner worked in the city of [redacted] before traveling to Pittsburgh.) [redacted] discussed, in detail, the petitioner's work with brain proteins, but, like [redacted] did not establish his own expertise or credentials in that area. [redacted] described himself as "an experienced chest physician specializing in chest X-ray reading in the fields of pulmonary diseases and pulmonary oncology treatments," without explaining how this specialty overlaps with the petitioner's work.

A passage in [redacted] letter reads: "I understand the INS wants to know why [the petitioner] is seeking a national interest waiver rather than going the more usual route of obtaining a labor certification. The reason is that the ability to make significant advances in research is directly dependent on the skill, insight, and intelligence of the researcher." This passage is almost identical to a previously quoted section of [redacted] letter, suggesting that at least one of the two witnesses, possibly both, followed a template either from the other witness or some unnamed source.

On [redacted] the director instructed the petitioner to "submit further evidence demonstrating [the impact of her] specific prior achievements." The director stated that the petitioner had not shown that her published and presented research had discernibly influenced others in her field.

In response, counsel acknowledged that the petitioner "does not have an impressive number of either publications or citations by other scientists to her publications," but asked nevertheless for "exceptional and open-minded consideration because we believe she is of much greater value to our country than many of her peers in her field of research." Counsel claimed that the petitioner's

> background alone sets her apart from the majority of her peers. . . . How often does this happen, for a nurse to become a Ph.D. graduate so she could connect the real life practice and suffering to scientific research to help advance both medical science and caring practice? Not very often! Maybe one out of a million. And millions of patients will benefit from her combined expertise in both nursing and scientific research.

This combination of speculation and hyperbole contributes nothing of substance to the record. It may be unusual for a nurse to earn a doctorate and conduct medical research, but this does not force the conclusion that "millions of patients will benefit from" this unusual combination of credentials. Scarcity does not equal or imply importance.

Counsel added:

> Going through the labor certification process will undoubtedly deny [the petitioner's] opportunity to contribute to our nation's scientific research as she is still in her early years of Postdoctoral research which does not provide opportunity for immigrant visa petition, not to even mention a position that requires both knowledge and experience both in nursing and scientific research.

Counsel, here, appears to argue that, because the petitioner "is still in her early years of Postdoctoral research," she is not yet in a position to secure a permanent job offer with labor certification. Nevertheless, the argument appears to go, the petitioner's potential to benefit the United States in the future outweighs her present inexperience which prevents employers from extending permanent job offers rather than continuing temporary training positions. Counsel offers other variations on the basic argument that the petitioner's potential to benefit the United States is such a foregone conclusion that USCIS may as well grant the waiver now, rather than insist that a future employer in the United States pursue the bothersome formality of obtaining a labor certification. This argument, however phrased, is not persuasive. An alien with little or no track record of impact and influence cannot qualify for a waiver based on her confidence, however sincere, that such impact and influence will follow. A postdoctoral researcher can qualify for the waiver, but eligibility must rest on demonstrable evidence rather than on expectations.

The director, in the request for evidence, asserted that letters from independent witnesses have more weight than letters from faculty members at the petitioner's own institution. In response, the petitioner submitted five new witness letters, four of them from [redacted] faculty members and the fifth from a witness who has "worked with her collaborators and mentors." That fifth witness is [redacted] who asserted that one of the petitioner's then-unpublished papers "will be important groundwork in eventually enabling clinical investigators to identify risk factors for poor outcome and then to tailor (personalize) treatment for those with these risk factors in order to improve outcomes." [redacted] asserted: "Since [the petitioner] is only one year into her postdoctoral training, it is not surprising that her research is only beginning to be seen in the published literature. . . . I expect we will see her work not only indexed in

interdisciplinary journals but increasingly cited." This speculative claim is an example of the argument that, while the petitioner has not yet had a significant impact, she surely will and therefore should receive a waiver.

[redacted] in her second letter on the petitioner's behalf, stated that, due to the slow pace of the publication process, "it is of no surprise that [the petitioner's] work has not been cited yet. It typically takes several years after completion of a post-doctoral fellowship to achieve such an accomplishment. I believe [the petitioner] is emerging as a leader in [her] field." The factors that [redacted] cited to support the latter claim – such as the aforementioned young investigator award, and a job interview with the [redacted] – are not persuasive. The AAO has already discussed the petitioner's award, and the possibility of an imminent job offer is a poor argument for waiving the job offer requirement. As previously noted, [redacted] ultimately did employ the petitioner, who is eligible to work temporarily as an H-1B nonimmigrant during what is, by definition, a temporary postdoctoral position.

[redacted] echoed [redacted] assertion that it is simply too soon to see citation of the petitioner's work. He stated: "it takes quite some time for such citations to be even possible given the time frame of journal publication," and claimed that the petitioner "has been a leading scientist pioneering at the forefront of the study of neruoglobin [*sic*] in human clinical populations." The implied argument is that it is too soon to tell how influential the petitioner's work will prove to be, but it is in the national interest to assume that it will be very influential; and that early research into a specific subject is bound to be, by definition, foundational. Again and again, the record returns to the core argument that a premature conclusion about the significance of the petitioner's work is preferable to the presumed alternative, in which (for reasons unexplained) the petitioner is otherwise ineligible to immigrate into the United States.

[redacted] stated:

> Although I only recently met the candidate, I have learned about her important work and believe that there are many reasons for awarding her Green Card status. I will list five:
>
> 1) [The petitioner] has an exemplary background in both the areas of academia and research. . . .
>
> 2) Not only does [the petitioner] focus on the mechanism of cerebral hypoxic/ischemic insult, but she also uses a genetic perspective to better understand individuals and how they cope with illness/trauma.
>
> 3) Active participation in conferences . . . and attention from the [redacted]
>
> 4) [The petitioner] brings to her scientific work an[] enthusiasm to help people who have suddenly lost their physical, psychological, and emotional capacities find a way to continue their life journey with hope.

> 5) The combination of being a nurse and a PhD researcher is very rare but extremely valuable. It strongly suggests that [the petitioner] will not only work on problems of high clinical relevance but also serve as an important role model for others in the nursing profession.

None of the listed reasons is a strong basis for the waiver. The list, as a whole, is essentially an argument that the petitioner should receive the waiver because she is well qualified in an important area of research. Like other witnesses, instead of comparing the petitioner with others in her field, [redacted] asserts that the petitioner's future promise justifies immigration benefits now.

[redacted] asserted that the petitioner's "research promises to break new ground," "because only five human studies have . . . been published" since the discovery of neuroglobin in 2000, and "[o]nly [the petitioner] is exploring the association between neuroglobin and cerebral hypoxic/ischemic insult." [redacted] described the petitioner's then-ongoing research in technical detail, but instead of describing the petitioner's proven contributions, [redacted] discussed what the petitioner "endeavors" and "hopes to provide."

The director denied the petition on April 5, 2010. The director acknowledged the substantial intrinsic merit and national scope of medical research, and quoted from several witness letters. The director concluded, however, that the petitioner had not produced any objective evidence of the significance of her minimal publication record.

On appeal, counsel contends that the director "has failed to recognize the Appellant's remarkable contribution to the study of neuroprotective genes' impact in traumatic brain injury." On the contrary, the petitioner has failed to support the claim that her contribution is "remarkable." The value of this kind of research is not in dispute, which is why the director readily acknowledged its substantial intrinsic merit. Pursuing this line of research does not guarantee a waiver, and neither does being a nurse who pursues this line of research.

Counsel claims that the petitioner's "groundbreaking research has an enormous impact on the study of traumatic brain injury," but the petitioner has been unable to provide any evidence in support of the assertion that her research has had an "enormous impact."

Counsel states that the petitioner's research "is sufficiently novel and unique to warrant exceptional ability." As previously explained in depth, "exceptional ability" is not the threshold for a national interest waiver; it is one facet of the underlying immigrant classification which, in turn, normally requires a job offer with labor certification.

Counsel states that the petitioner "had already submitted to the Service eleven (11) letters of support by well-known experts in the field who have either worked with [the petitioner] or are simply familiar with her achievements but have never met her. Another letter from [redacted] has now been added." This passage from the appellate brief illustrates some of the deficiencies in counsel's approach. Counsel simply asserts that the petitioner's witnesses are "well-

known experts in the field," when that claim is a conclusion to be proven rather than a premise to be assumed. With respect to the assertion that some witnesses are "familiar with [the petitioner's] achievements but have never met her," the overwhelming majority of the letters (including the newly submitted letter on appeal) are from [redacted] faculty members.

The letter from [redacted] may be newly submitted, but it is not new. The date on the letter, [redacted] 2010, coincides with the preparation of other letters submitted in response to the February request for evidence. Why the petitioner did not submit this letter at that time is not clear.

[redacted] states: "It is very important to the national interest that we continue to develop nurse scientists who can continue to transform the field into an investigative field." Whatever the merits of this assertion, it does not establish or justify a blanket waiver for scientific researchers who are also trained nurses. [redacted] echoes prior assertions that the petitioner "is only in her first year of post-graduate training. . . . It is too early for her work to be sited [*sic*] extensively." [redacted] opines, nevertheless, that the petitioner "is clearly on tract [*sic*] to contribute additional publications in the field."

Counsel is correct that citations are not the only possible way to gauge the impact of a researcher's work, but in their absence, the petitioner must establish some other equally objective measure. The petitioner has not done this, instead asserting (through witnesses) the belief that citations are bound to come along because her work is so groundbreaking.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters submitted in support of the petition mostly represent a single institution, and do not establish that the petitioner's contributions have influenced the field. Instead, the petitioner's own mentors and collaborators express confidence that the petitioner's work will be influential once it has had time to do so.

After quoting numerous witnesses who state that the petitioner has no citation history because it is too early in her career, counsel asserts that the petitioner "has over thirteen (13) years of experience in her field of endeavor." To reach this figure, counsel counts the petitioner's experience as a nurse before she began training to be a researcher. Length of experience is a factor in determining exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B). Counsel thus considers the petitioner to be a

nurse when judging her length of experience; a researcher when discussing the broader impact of her work; and a nurse/researcher when advancing the mistaken argument that the relative scarcity of such workers is a strong factor in favor of granting the waiver.

Counsel asserts that the petitioner has published her work, and presented her findings at conferences. Counsel fails to explain how this distinguishes the petitioner from others in her field. Nothing in the record suggests that it is the norm for researchers to keep their findings to themselves. Rather, dissemination of one's findings, either in print or through presentations, is not only expected, but it is arguably the very goal of doing such research in the first place.

An undated personal statement from the petitioner discusses her research and employment history in greater detail, but otherwise adds little to the record.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.